

This followed by a disjunctive alternative burden of proof instruction which ended with the phrase, "that is what I mean by the term reasonable doubt or proof beyond a reasonable doubt" (6/23/98 TR. page 94) which did not explain which portion of the forgoing instructions it referred to, id.

Attorney Amabile did not object to these errors (6/23/98 TR. page 117) and attorney Duncan refused to brief this issue [Addendum page 1].

During the second day of deliberations, juror's requested Judge Banks to "please refresh our memories about everything you told us about doubt and reasonable doubt" (6/24/98 TR. pages 4-5). Showing his lack of legal knowledge concerning the Commonwealth V Kane, 19 Mass. App. Ct. 129, 139 (1984) decision, attorney Amabile then requested that "you should also re-instruct them exactly the way you did before on the question of presumption of innocence" (6/24/98 TR. page 5). Subsequently the jury returned again with another question seeking reinstruction (6/24/98 TR. pages 10-19) at which time Amabile again urged for reinstruction on the presumption of innocence which had not been requested by jurors (6/24/98 TR. page 16).

Judge Banks then repeated his erroneous instruction that the "presumption of innocence is a force in the case unless proof beyond a reasonable doubt causes it to disappear. If the Government proves its case beyond a reasonable doubt, the presumption of innocence disappears like it never ex-

isted" (6/24/98 TR. page 30) followed by a conjunctive last sentence confusing the proceeding burden of proof paragraph, by equating both the explanation of the burden of proof with doubt, when Judge Banks told the jury "that's what we mean by proof beyond a reasonable doubt and the term reasonable doubt itself" (6/24/98 TR. page 35), which Amabile also did not object to (6/24/98 page 41).

b) THE MERITS OF GROUND THREE:

A new trial was granted when the court instructed that the "presumption of innocence" "then disappears" when "evidence of guilt is introduced" in Commonwealth V Kane, 19 Mass. App. Ct. 129, 139-140 (1984) because the presumption of innocence always continues throughout the case right into jury deliberations, id, Mahorney V Wallman, 917 F2d 469, 471 n.2 (10th Cir. 1990), and a first degree murder motion for a new trial was allowed by Judge Carol Ball on this issue in Commonwealth V Dello, Suffolk Nos 8803-8809 (6/9/03) filed in attached addendum pages 27-30, based on Commonwealth V Kane. The repeated instructional errors (6/23/98 TR. pages 90-91; 6/24/98 TR. page 30) violated the defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and Article 12 of the Massachusetts Declaration of rights.

During the primary jury instructions Judge Banks also said:

"when all is said and done, if there remains in the mind

any reasonable doubt consisting of any fact or facts the essential element of guilt by the defendants with any crime charged, then the defendant would have to have the benefit of it an acquittal. That is what we mean by the term reasonable doubt or proof beyond a reasonable doubt" (6/23/98 TR. page 94)

The same instruction was later given in response to a jury question but the word "or" was changed to "and" when Judge Banks told jurors:

"When all is said and done, if there remains in the minds of you, this jury, any reasonable doubt of the existance of any fact or act which is an essential element of one or more of the crimes charged, then the defendant would have to have the benefit of it by an acquittal. That's what we mean by proof beyond a reasonable doubt and the term reasonable doubt itself" (6/24/98 TR. page 34)

Neither the Supreme Judicial Court, nor the Superior Court on remand, have ever approved the last sentence disjunctive ("or") or conjunctive ("and") mixing of the meaning of reasonable doubt with proof beyond a reasonable doubt, and the court may take judicial notice of the fact that only one of the two alterative phrases are used in the modified webster modal jury instructions, because the combination Judge Banks used was and is extremely confusing. By ending a paragraph defining "reasonable doubt" as meaning proof beyond a reasonable doubt by the court inverted the instruction turning it on its head, which amounts to structural error requiring a new trial, Sullivan V Louisiana, 508 U.S. 275, 280-282 (1993) for violating the defendant's fundamental right to a fair jury trial guaranteed by both the Sixth and Fourteenth Amendments to the United States Constitution, id, Dunn V Perrin,

570 F2d 21, 24-25 (1st Cir. 1978); Lanigan V Maloney, 853 F2d 40 (1st Cir. 1988) and Article 12 of the Massachusetts Declaration of rights, Commonwealth V Wood, 380 Mass 545, 547-551 (1980); Commonwealth V Pickles, 402 Mass 775, 788 (1988).

Similarly both Article 12 of the Massachusetts Declaration of rights, Commonwealth V Gilmore, 399 Mass. 741, 744-746 (1987) and the Sixth and Fourteenth Amendments to the United States Constitution were violated by Judge Banks' interrupting defense counsel's closing argument and ordering counsel to stop arguing the law four times (6/23/98 TR. pages 34, 35-36 44), United States V DeLoach, 504 F2d 185, 187-193 (D.C. Cir. 1974); Conde V Henry, 198 F3d 734, 739-742 (9th Cir 1999); Herring V New York, 422 U.S. 853 (1975); when such argument was proper, Commonwealth V Geagan, 339 Mass. 487, 518 (1959); Commonwealth V Hogan, 426 Mass 424, 432 (1998).

Unlike the non-prejudicial finding where "defense counsel was allowed to continue with a fairly comprehensive discussion of reasonable doubt" in Commonwealth V Hogan, 426 Mass. 424, 432-433 (1998) in this case cutting off closing argument followed over two dozen refusals' to allow defense attorney Amabile to go to sidebar and many other prejudicial comments Judge Banks angrily made snarling and yelling at defense counsel in front of the jury (6/18/98 TR. pages 46,47,53,118,149; 6/19/98 TR. pages 44,70,125,132,136,245,251; 6/22/98 TR. pages 31,53,102,123,132,138,146,150,176,186,189,253) while all prosecution requests for sidebar were allowed and Judge Banks

belittled and lectured Amabile repeatedly at sidebar (6/18/98 TR. pages 15-20; 6/22/98 TR. pages 103-110; 6/23/98 TR. pages 45-46) while making the presumptively correct finding that "this about as flagrant a contwst between a Judge and a lawyer as I've experienced in a long, long time" (6/22/98 TR. page 105).

The angry facial features of Judge Banks and his mistreatment of trial counsel violated the defendant's right to a fundamentally fair trial guaranteed by the Fourteenth Amendment to the United States Constitution, Porcaro V United States, 784 F2d 38, 41-42 (1st Cir. 1986); Oses V Commonwealth of Massachusetts, 775 F.Supp 443, 455-462 n.24 D.Mass 1991), grant of writ affirmed, 961 F2d 985 (1st Cir. 1992) and Article 12 of the Massachusetts Declaration of Rights.

**c) FAILURE TO REQUEST, OR OBJECT TO, JURY INSTRUCTIONS:**

With respect to attorney Amabile's failure to file a writted Mass.Crim.P.Rule 24(b) request for correct jury instructions and failure to object to the erroneous, prejudicial and confusing presumption of innocence and reasonable doubt equated as meaning proof beyond a reasonable doubt instructions such non-strategic errors show a startling ignorance of important nuances and subtleties of the law; and where, as here, jurors came back with repeated questions during several days of deliberations this court may grant a new trial based on the obvious ineffective assistance of trial counsel, Corsa V Anderson, 443 F. Supp 176, 178 (MD Penn 1976); Gray V Lynn, 6 F3d 263, 269-270 (5th Cir. 1993); Oyola V Boles, 947 F2d 928, 930-935 (11th Cir. 1991); Kubat V Theiret, 867 F2d 351, 371 (7th Cir.

1989); Commonwealth V Peloquin, 52 Mass. App. Ct. 480 (2001).

d) INEFFECTIVE ASSISTANCE OF DIRECT APPEAL COUNSEL:

Unlike the unobjected to issues briefed by direct appeal attorney David Duncan, trial attorney John Amabile specifically objected to trial Judge's misconduct and sought a mistrial (6/22/98 TR. pages 106-108, 110) then again specifically objected to similar misconduct when Judge Banks kept interrupting the defense closing argument (6/23/98 TR. page 46). The forgoing issues set out in ground three (a)(b)(c) were obvious from the transcript, Gray V Greer, 800 F2d 644, 646-647 (7th Cir. 1986) and any competent appellate specialist would have seen the connection between subtle flaws in jury instructions and Judge Banks restricting defense counsel from arguing those areas of law, id.

Although an evidentiary hearing should be held to hear attorney Duncan's explanations, Mapes V Coyle, 171 F3d 408, 427-429 (6th Cir. 1999), the court can also recognize Duncan's refusal (Addendum page a-1) to file supplemental briefing Jack Beliard specifically requested (Addendum pages A-13 through A-18), and summarily grant a new trial, based on ineffective assistance of direct appeal counsel, Mapes V Tate, 388 F3d 187, 189-193 (6th Cir. 2004); Roe V Delo, 160 F3d 416, 418-420 (8th Cir. 1988); Lucas V O'Dea, 179 F3d 408, 416-420 (6th Cir. 1999).

**IV. OTHER ATTORNEY ERRORS INCLUDING THE FAILURE TO PREPARE THE DEFENDANT, FAILURE TO SUMMONS TRIAL DEFENSE WITNESSES, AND FAILURE TO HAVE THE DEFENDANT AND UNCALLED TRIAL WITNESS TESTIFY AT THE FIRST NEW TRIAL MOTION HEARING, VIOLATED THE DEFENDANT'S RIGHT TO THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL, PRE-DIRECT APPEAL MOTION HEARING COUNSEL AND THE RIGHT TO TESTIFY GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 12 OF THE MASSACHUSETTS DECLARATION OF RIGHTS**

**a) FAILURE TO PREPARE THE ACTUAL INNOCENT DEFENDANT TO TESTIFY:**

Although Committee for Public Counsel Services standards for trial counsel do not require such preparation as a cost-saving policy to limit billable hours, any competent lawyer has a duty to carefully and meticulously prepare to a criminal defendant to testify, United States v Frappier, 615 F. Supp 51, 53 (D.Mass. 1986); Flanagan, TRIAL PRACTICE, Mass. Practice series volume 43, §125 pages 114-116 (1993 Edition with 2004 supplement); Fisher v Gibson, 282 F3d 1283, 1301 (10th Cir. 2002).

The affidavit of Jack Beliard not only verifies trial attorney John Amabile did not sit down with him to go over a long list of direct examination questions, or roleplay a prosecutor doing mock cross-examination of the defendant, but Amabile also did not tell Jack Beliard that only a criminal defendant has the exclusive right to decide whether or not to testify, as required by C.P.C.S trial counsel Performance Standard chapter IV Rule 1.3(f). Chapter VI trial counsel Rules 6.1 and 6.7 concerning pre-trial preparation, and presentation, of witness do not include anything about preparing a client to testify, or notifying him of such right at trial, id.

When attorney Amabile decided not to put the defendant on the witness stand, Amabile had not observed the defendant's reactions to any preparatory questions or mock cross-examination; hence, defense counsel was not in a position to decide whether or not the defendant should testify. Those combined non-strategic failures to prepare the defendant to testify or to make a knowing, intelligent and voluntary decision to waive his Fifth, Sixth Fourteenth Amendment and Article 12 right to testify, require this court to grant a new trial after hearing the defendant testify to defense facts set out in his affidavit, filed herewith and incorporated herein, as well as hearing attorney Amabile's testimony at the evidentiary hearing, Commonwealth V Freeman, 29 Mass. App. Ct 635, 640-643 (1990); Gallego V United States, 174 F3d 1196, 1198-1199 (11th Cir. 1999); State V Hampton, 818 So.2d 720, 729 (2002); Campos V United States, 930 F.Supp. 787, 792 (ED. N.Y. 1994); United States V Butts, 630 F.Supp. 1145 (D.ME. 1986); Commonwealth V Licata, 412 Mass. 654, 661-662 (1992).

Attorney David Duncan had the October 14, 1999 affidavit of Jack Beliard and Duncan knew attorney Amabile never prepared the defendant to testify, but Duncan concealed trial counsel's ineffective assistance by omitting this meritorious issue from first new trial motion proceedings. Attorney Duncan knew, that his client was actually innocent and, therefore, should have testified at trial.



Because Massachusetts recognizes the right to effective assistance of post-conviction counsel during new trial motion proceedings, Breese V Commonwealth, 415 Mass 249, 251-252 n.4 (1993), either the Superior Court, or a later Federal Habeas Corpus reviewing court, must hear attorney Duncan's testimony explaining his failure to include this issue in his Rule 30 motion, during the necessary evidentiary hearing on this issue Mapes V Coyle, 171 F3d 408, 427-429 (6th Cir. 1999) grant of writ affirmed, Mapes V Tate, 388 F3d 187, 189-193 (6th Cir. 2004).

b) FAILURE TO PREPARE AND PRESENT DEFENSE WITNESS:

Ground one(e) is incorporated herein by reference. "An attorney's performance is deficient when he or she fails to conduct any investigation into exculpatory evidence and has not provided any explanation for not doing so", Stevens V Delaware Correctional Center, 152 F.Supp.2d 561, 576 (D. Del 2001) and "ineffectiveness is generally clear in the context of a complete failure to investigate because counsel can hardly be said to have made a strategic choice against pursuing a certain line of investigation when he has not yet obtained the facts on which such a decision can be made", United States V Gray, 878 F2d 702, 711-712 (3rd Cir. 1989); Kimmelman V Morrison, 477 U.S. 365, 385-386 (1986).

"An attorney who fails to interview a readily available witness whose non-cumulative testimony may potentially aid the defense should not be allowed automatically to defend his omission simply by raising the shield of trial strategy and tactics", Crisp V Duckworth, 743 F2d 580, 584 (7th Cir. 1984) because "counsel's anticipation of what a potential witness would say does not excuse the failure to find out", United States V Moore, 554 F2d 1086, 1093 (D.C. Cir. 1976). Furthermore, defense "counsel cannot assess credibility and demeanor of a prospective witness without looking him in the eye and hearing him tell his story", US EX REL Hampton V Leibach, 347 F3d 219, 252 (7th Cir. 2003) quoting, Lord V Wood, 184 F3d 1083, 1095 (9th Cir. 1999).

The attached affidavit of Manual Damas shows he was a material witness capable of contradicting the prosecutors main witnesses, and investigator Joe Murphy's July 11, 1997 report shows Mr. Damas and the defendant's mother were important witnesses who should have been called (Addendum pages 31-33). New assigned CPCS counsel will obtain further affidavits from Mr. Damas, the defendant's mother and his brother Annibal (A/K/A Bobby) Beliard consistent with investigator Murphy's report (Addendum page 33). Attorney John Amabile's failure to personally interview, prepare to testify, summons and present the testimony of these witnesses requires an evidentiary hearing, detailed Rule 30(b) findings, and new trial, Moran V Vose, 816 F2d 35, 37 (1st Cir. 1987); Noble V Kelly, 89 F.Supp.2d 443, 463 (S.D. N.Y. 2000); Pavel V Hollins, 261 F3d 210, 219-229 (2nd Cir. 2001); Sanders V Ratelle, 878 F2d 702, 716 (3rd Cir. 1989); Griffin V Warden, 970 F2d 1355, 1358 (4th Cir. 1992); Nealy V Cabana, 764 F2d 1173, 1176-1179 (5th Cir. 1985); Bryant V Scott, 28 F3d 1411, 1418-1419 (5th Cir. 1994); Workman V Tate, 957 F2d 1339, 1345 (6th Cir. 1992); US EX REL Cosey V Wolf, 727 F2d 656, 657-660 (7th Cir. 1984); Sullivan V Fairman, 819 F2d 1382, 1386-1390 (7th Cir. 1987); Montgomery V Peterson, 846 F2d 407, 412-414 (7th Cir. 1988); Harris V Reed, 894 F2d 871, 876-879 (7th Cir. 1990); Washington V Smith, 219 F3d 620, 626-633 (7th Cir. 2000); Davis V Lambert, 388 F3d 1052, 1060-1067 (7th Cir. 2004); Chambers V Armontrout, 907 F2d 825, 828-832 (8th Cir. 1990); Brown V Myers, 137 F3d 1154,

1157 (9th Cir 1998); United States V Cook, 45 F3d 1350, 1353-1356 (10th Cir. 1995); Code V Montgomery, 799 F2d 1481 (11th Cir. 1986).

Similarly the expected affidavit of Bleius Beliard should show that he never would have testified for the prosecution against his own brother, that attorney Amabile did not attempt to locate, interview prepare and summons Belius Beliard, but had counsel done so and the court threatened to admit the evidence due to any refusal to testify for the Commonwealth supporting a finding of unavailability, Belius Beliard could have testified that his plea was the equivalent of nolo contendere, that he didn't accept responsibility for specifically firing any .25 calibre firearm, did not possess the .25 calibre firearm, and chose not to fight that individual charge solely to obtain a reduced sentence for armed home invasion and the firearms offense. Both Belius Beliard and attorney John Amabile must testify to fully develop the record at an evidentiary hearing, Commonwealth V De Lacruz, 61 Mass. App. Ct. 445, 452 (2004); Commonwealth V Aviles, 40 Mass. App. Ct. 440, 444-447 (1996); Commonwealth V Licanta, 412 Mass 654, 662 (1992); Epsom V Hail, 330 F3d 49 (1st Cir. 2003). Failure to order his guilty plea transcript shows similar incompetence.

**c) ATTORNEY DUNCAN WAS ALSO INEFFECTIVE:**

As set out in defendant Jack Beliard's affidavit, he gave attorney David Duncan the affidavit of Manuel Davis (Addendum pages 31-32), attorney Duncan had investigator Murphy's report (Addendum page 33) and the ground two record alerted attorney Duncan to the necessity of ordering Belius Beliard's guilty


plea transcript,[ where ineffective attorney Amabile did not obtain the guilty plea transcript prior to, or during, the defendant's trial. Being too lazy to obtain affidavits from Annibal Belird or the defendant's mother and refusing to use Manuel Damas' affidavit, or obtain and file Belius Beliard's affidavit in support of the new trial motion filed by attorney Duncan, strongly supports this court requiring attorney Duncan to testify at an evidentiary hearing, Mapes V Coyle, 171F3d 408, 427-429 (6th Cir. 1999) writ granted, Mapes V Tate, 388 F3d 187, 189-193 (6th Cir. 2004), followed by detailed specific Rule 30(b) findings in support of this court granting a new trial based on the combined ineffective assistance of trial and post-conviction counsel violating the defendants' rights guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 12 of the Massachusetts Declaration of rights

CONCLUSION

This Court (SJC) is requested to remand this to the Superior Court and to assign CPCS counsel (averring under pain and penalty of perjury only \$80.00 in prison personal account,\$180.00 in prison savings account and no real property or outside bank accounts,liquid assets to retain counsel,and family still owing Atty Duncan), allow post-trial discovery,grant an evidentiary hearing to fully develop the record and after making extensive detailed factual findings,Rule 30(b), allow this new trial motion,and grant Rule 30(c)(8) bail pending any appeal thereof,id.

January 11,2005

RESPECTFULLY SUBMITTED BY,

  
\_\_\_\_\_  
Jack Beliard pro se  
PO Box 100  
S.Walpole,MA.02071

Original:SJC filing  
cc.Superior Court  
copy served on Assistant  
District Attorney Paul Linn,  
One Bulfinch Place,  
Boston,MA.02114-2997

cc.CPCS Appeals Unit David Nathanson for assignment  
cc.Atty John Amabile(w/affidavit request)  
cc.Atty David Duncan (w/~~A~~ffidavit request)

*Exhibit*

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
UNITED STATES COURTHOUSE  
1 COURTHOUSE WAY  
BOSTON, MASSACHUSETTS 02210

*CSuit-4710)*

GEORGE A. O'TOOLE, JR.  
DISTRICT JUDGE

January 10, 2005

John A. Amabile, Esq.  
Amabile & Burkly, PC  
380 Pleasant Street  
Brockton, MA 02401

RE: DuPont v. Nolan, CV 04-11431-GAO

Dear Mr. Amabile:

Enclosed is a photocopy of a letter I have received from Mr. DuPont. I trust you will be in touch with him.

Very truly yours,

  
George A. O'Toole, Jr.  
United States District Judge

Enc.

cc: Michael Kevin DuPont, # 44692 ✓  
P.O. Box 100  
South Walpole, MA 02071-0100





UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

MICHAEL KEVIN DUPONT, \*  
PETITIONER \*

\* No. 04-11431-GAO

V.

DAVID NOLAN, \*  
Respondent \*

~~XXXXXXXXXXXXXXXXXXXX~~

EMERGENCY MOTION FOR COURT TO COMPEL  
C.J.A. ATTORNEY JOHN AMABILE TO  
COMMUNICATE WITH PETITIONER OR  
FOR REASSIGNMENT OF C.J.A. COUNSEL

Now comes The Petitioner, AVERING  
under PAIN AND PENALTY of perjury, that  
he shall be released from PRISON in  
MARCH 2005, And moves Judge O'Toole  
to compel ATTORNEY JOHN AMABILE to  
communicate with the PETITIONER, or  
for ASSIGNMENT OF A new C.J.A. lawyer  
who will press for a BAIL Release Hearing,  
Accept collect calls and Answer Letters.

In support hereof, Petitioner also  
AVERS that AMABILE has not answered  
Petitioner's 12/9/04 letter or a second letter,  
his office secretary Refuses to Accept  
collect telephone calls in Boston and Brockton,  
And AMABILE's Boston office says he does  
not work in Boston office and is always in Brockton,  
1/6/05 copy served & submitted by  
Ass. Atty Gen. Susan Pearson  
C.J.A. Coordinator  
cc. Atty John Amabile *Robert Paul Prose*



Exhibit

CASREF

United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:04-cv-11431-GAO  
Internal Use Only

DuPont v. Nolan  
Assigned to: Judge George A. O'Toole Jr.  
Referred to: Magistrate Judge Marianne B. Bowler  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 06/17/2004  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner**  
-----

Michael Kevin DuPont

represented by **Michael Kevin DuPont**  
MCI Cedar Junction  
P.O. Box 100  
South Walpole, MA 02071  
PRO SE

V.

**Respondent**  
-----

David Nolan, *Superintendent*

represented by **Susanne G. Reardon**  
Attorney General's Office  
One Ashburton Place  
18th Floor  
Boston, MA 02108  
617-727-2200  
Fax: 617-727-5755  
Email:  
susanne.reardon@ago.state.ma.us  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
06/17/2004	1	MOTION for Leave to Proceed in forma pauperis by Michael Kevin DuPont.(Jenness, Susan) (Entered: 06/23/2004)
06/17/2004	2	PETITION for writ of habeas corpus pursuant to 28:2254 , filed by Michael Kevin DuPont.(Jenness, Susan) (Entered: 06/23/2004)

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

MICHAEL KEVIN DuPONT, \*  
PETITIONER \*

V. \*

DAVID NOLAN, \*  
RESPONDENT \*

No. 04-11431-GAO

\*\*\*\*\*

BLAKELY V. WASHINGTON, 124 S.Ct 2531(2004) LEGAL GROUND MOTION  
FOR IMMEDIATE BAIL AND NOTICE OF COMPLAINT AGAINST JUDGE  
O'TOOLE FOR UNTIMELY RULINGS AND COVERING UP FOR PROSECUTORS

Now comes the unlawfully imprisoned Petitioner, citing Judge O'Toole's principle of **"enough is enough"**, US V. NORTH, 98-10176-GAO (3/10/00 transcript page 138), and, where Petitioner's sentence expires in three months after having served eight years excessive time over wrap up due to pending APPRENDI-type violation of the rules of BLAKELY V. WASHINGTON, 124 S.Ct.2531(2004), especially the state Court's decision being contrary to the Apprendi-Blakely "impact analysis", UNITED STATES V. MUFFLEMAN, 327 F.Supp2d 79,88-89 (D.Mass 2004), Petitioner, for a third time, moves for immediate bail release under the Blakely bail decision in UNITED STATES V. CASTRO, 382 F3d 927,929(9th Cir 2004) (see former Docket entries#8, #19,#21), and, in relation thereto attaches an advance copy of his 12/6/04 letter complaint to the First Circuit Administrator which concerns Judge O'Toole's pattern of untimely rulings in many other case, and in particular Judge O'Toole's specifically covering-up for unethical Ass.Atty.General Susan Reardon in this case and his 18 USC § 2 aiding and abetting her fraudulent obstruction of justice conspiracy with state prosecutors Judge Quinlan is also covering up for (see attached exhibit state DE#597,#598) by Judge O'Toole failing to refer her to the Board of Bar Overseers and delaying rulings in a joint venture conspiracy to moot the habeas excessive sentence grounds (DE#20,#23,#25,#26,#27,#28,#29,#30,#31-36). IF not immediately released on bail, petitioner shall lawfully impose sanctions using first amendment rights to make Judge O'Toole work much harder by ~~proving~~ <sup>providing</sup> massive pro bono assistance to O'Toole's other litigant victims upon release anyway in March 2005 !  
November 25, 2004

Copy served on corrupt and  
unethical AAG Susan Reardon  
cc. State Court files

SUBMITTED BY,

*Michael Kevin DuPont*

Michael DuPont Pro Se  
PO Box 100  
S.Walpole, MA.02071

*Exhibit #15  
To conceal his  
own misconduct, struck  
Judge O'Toole's status  
this from Accused  
AT 1/27/05 status  
conference  
hearing*

06/17/2004	●	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Bowler. (Jenness, Susan) (Entered: 06/23/2004)
06/17/2004	● <u>3</u>	MOTION to Assignment of Counsel to Expedite Bail Release and for Necessary Evidentiary Hearing by Michael Kevin DuPont. (Weissman, Linn) Additional attachment(s) added on 6/28/2004 (Jenness, Susan). (Entered: 06/25/2004)
06/23/2004	●	Case undergoing preliminary screening (Jenness, Susan) (Entered: 06/23/2004)
06/24/2004	● <u>4</u>	Judge George A. O'Toole Jr.: SERVICE ORDER entered re: 2254 Petition. Order entered pursuant to R.4 of the Rules governing Section 2254 cases for service on respondents. Answer/responsive pleading due w/in 20 days of rpt of this order. cc/cl(Weissman, Linn) (Entered: 06/25/2004)
06/24/2004	● <u>5</u>	Judge George A. O'Toole Jr.: ORDER entered granting <u>1</u> Motion for Leave to Proceed in forma pauperis. cc/cl (Weissman, Linn) (Entered: 06/25/2004)
06/24/2004	● <u>6</u>	Judge George A. O'Toole Jr.: ORDER entered denying <u>3</u> petitioner's motions for appointment of counsel and for an evidentiary hearing without prejudice to the re-filing of these motions after the respondent has filed a responsive pleading to the petition.cc/cl (Weissman, Linn) (Entered: 06/25/2004)
06/28/2004	●	Documentation attached to motion No. 3 for appointment of counsel is not scannable however is attached in hard copy to motion. (Jenness, Susan) (Entered: 06/28/2004)
07/02/2004	● <u>7</u>	MOTION for Reconsideration of Counsel Assignment on July 19, 2004 and to Deny Respondent's Time Extensions or to Transfer Case to Judge Lindsay by Michael Kevin DuPont.(Barrette, Mark) (Entered: 07/08/2004)
07/02/2004	● <u>8</u>	EXHIBIT by Michael Kevin DuPont.***Too large to scan*** (Barrette, Mark) Additional attachment(s) added on 7/8/2004 (Barrette, Mark). (Entered: 07/08/2004)
07/02/2004	● <u>9</u>	Verified MOTION for Bail Hearing and to Expedite Bail Release Based Upon Blakely v. Washington, 124 s. Ct. (2004) ***Attachments too large to be Scanned*** by Michael Kevin DuPont.(Barrette, Mark) (Entered: 07/08/2004)
07/06/2004	●	Return receipt received for mail sent to Ms. Cathryn A. Neaves

08/20/2004	● <u>15</u>	ANSWER to Complaint <i>habeas corpus petition</i> by David Nolan. (Reardon, Susanne) (Entered: 08/20/2004)
08/20/2004	● <u>16</u>	MOTION to Dismiss <i>petition for writ of habeas corpus</i> by David Nolan.(Reardon, Susanne) (Entered: 08/20/2004)
08/20/2004	● <u>17</u>	MEMORANDUM in Support re <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> filed by David Nolan. (Reardon, Susanne) (Entered: 08/20/2004)
08/23/2004	● <u>18</u>	Supplemental ANSWER to Complaint(Volume 1&2***Too Large to be Scanned***) by David Nolan.(Barrette, Mark) (Entered: 08/24/2004)
08/24/2004	● <u>22</u>	Petitioner's Filing of Grievance Appeal # 4420 Concession by Respondent Nolan's 8/3/04 Exhibit Stipulating Full Exhaustion of Apprendi-Based Blakely v. Washington Grounds 3,6,7 and 15 Allowing Partial Summary Judgment Immediate Release from Michael Kevin Dupont. (Barrette, Mark) (Entered: 08/30/2004)
08/25/2004	● <u>23</u>	Opposition re <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> filed by Michael Kevin DuPont. (Barrette, Mark) (Entered: 08/31/2004)
08/31/2004	● <u>24</u>	Petitioners Decisional Support for Summarily Denying the Motion to Dismiss from Michael Kevin Dupont. (Barrette, Mark) (Entered: 08/31/2004)
09/09/2004	● <u>26</u>	MOTION Investigation of State Atty. General's Office Targeting Some Federal Judges For Omission of Collateral Exhaustion Records by Michael Kevin DuPont.(Barrette, Mark) (Entered: 09/15/2004)
09/09/2004	● <u>27</u>	NOTICE of Intent To File Dupont v O'Toole Bivens Complaint For Untrained Judge Failing To Compel Respondent to File 01-P-1792 Exhaustion Record and Delay Supporting Judge O'Toole Disqualifying Himself by Michael Kevin DuPont (Barrette, Mark) (Entered: 09/15/2004)
09/09/2004	● <u>28</u>	Demand for Expedited Decision on Merits and Assigned Counsel To Facilitate Release or for Judge O'Toole to Disqualify Himself by Michael Kevin DuPont. (Barrette, Mark) (Entered: 09/15/2004)
09/09/2004	● <u>30</u>	Verified Demand For Denial of Respondent's Motion to Dismiss and for Exposure of AAG Susan Reardon's Misconduct or for Judge O'Toole to Disqualify Himself by Michael Kevin DuPont to <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> . (Barrette, Mark) (Entered: 09/15/2004)



09/15/2004	● <u>25</u>	MOTION to Strike Respondents Answer, Supplemental Answer and Motion To Dismiss for Bad faith Omission of 01-P-1792 Exhaustion Record and False Answer Denial of Such Knowledge <u>15</u> Answer to Complaint, <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> , <u>18</u> Answer to Complaint by Michael Kevin DuPont.(Barrette, Mark) (Entered: 09/15/2004)
09/15/2004	● <u>29</u>	Third MOTION to Appoint Counsel To Expose the Respondent's Misconduct and Expedite Hearings For Release Within Six Months Remaining To be served on Twenty Year Sentence by Michael Kevin DuPont.(Barrette, Mark) (Entered: 09/15/2004)
09/20/2004	● <u>31</u>	Respondents 01-P-1792 BRIEF Exhibit Opposing Grounds 1,3,4,5,6,7, &15 on the Merits and not contesting State Habeas Corpus Exhaustion Remedy by Michael Kevin DuPont to <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> . (Barrette, Mark) (Entered: 09/23/2004)
09/20/2004	● <u>32</u>	State Exhaustion 01-P-1792 Appendix Volume IV Transcripts by Michael Kevin DuPont. (Barrette, Mark) (Entered: 09/23/2004)
11/19/2004	●	Judge George A. O'Toole Jr.: ORDER entered- Upon review of the file, this action is referred to the Magistrate Judge for appointment of counsel only.(Lyness, Paul) (Entered: 11/19/2004)
11/19/2004	● <u>33</u>	Judge George A. O'Toole Jr.: ORDER entered REFERRING CASE to Magistrate Judge Marianne B. Bowler Referred for: to appoint CJA Attorney (Attachments: # <u>1</u> Attorney assignment request# <u>2</u> Appointment of Counsel)(Edge, Eugenia) (Entered: 11/22/2004)

		Exhaustion Record and Delay Supporting Judge O'Toole Disqualifying Himself by Michael Kevin DuPont (Barrette, Mark) (Entered: 09/15/2004)
09/15/2004	● <u>28</u>	Demand for Expedited Decision on Merits and Assigned Counsel To Facilitate Release or for Judge O'Toole to Disqualify Himself by Michael Kevin DuPont. (Barrette, Mark) (Entered: 09/15/2004)
09/15/2004	● <u>29</u>	Third MOTION to Appoint Counsel To Expose the Respondent's Misconduct and Expedite Hearings For Release Within Six Months Remaining To be served on Twenty Year Sentence by Michael Kevin DuPont.(Barrette, Mark) (Entered: 09/15/2004)
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11/19/2004	●	Judge George A. O'Toole Jr.: ORDER entered- Upon review of the file, this action is referred to the Magistrate Judge for appointment of counsel only.(Lyness, Paul) (Entered: 11/19/2004)
11/22/2004	● <u>33</u>	Judge George A. O'Toole Jr.: ORDER entered REFERRING CASE to Magistrate Judge Marianne B. Bowler Referred for: to appoint CJA Attorney (Attachments: # <u>1</u> Attorney assignment request# <u>2</u> Appointment of Counsel)(Edge, Eugenia) (Entered: 11/22/2004)
01/04/2005	●	Judge George A. O'Toole Jr.: Electronic ORDER entered terminating <u>13</u> Motion for Extension of Time to Answer (Lyness, Paul) Modified on 1/5/2005 to add electronic to text (Edge, Eugenia). (Entered: 01/04/2005)



UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

MICHAEL KEVIN DUONT, \*  
PETITIONER, \*

v. \*  
DAVID NOLAN, \*  
RESPONDANT \*

\*\*\*\*\*

No. 04-11431-GAO

REQUEST FOR LEAVE TO BE HEARD AT 2/2/05 HEARING  
ON NEED FOR ASSIGNMENT OF DILIGENT/COMBETANT  
C.J.A. COUNSEL AND MOTION FOR BAIL RELEASE  
TO 30 DAY CONSECUTIVE SENTENCE ON 2/7/05  
FOR PURPOSE OF PREVENTING MATNESS OF GROUNDS

BECAUSE SO-CALLED CJA ATTORNEY JOHN  
AMABILE DID NOT FILE HIS APPEARANCE FOR  
OVER TWO MONTHS IN VIOLATION OF D. MASS  
LOCAL RULE 83.5.2(a), BROKE HIS WORD TO  
PETITIONER TO FILE BAIL MOTION SHORTLY AFTER  
1/12/05 VISIT AND PETITIONER QUESTIONS COUNSEL'S  
LACK OF KNOWLEDGE OF 28 USC 82254 DECISIONAL  
LAW, BASED ON AMABILE'S REPUTATION FOR LACK  
OF DILLIGENCE FOR OVER A DECADE SYSTEMWIDE  
AND LACK OF COMMUNICATION WITH FAILURE TO  
ANSWER PETITIONER'S LETTER QUESTIONS, IN VIOLATION  
OF S.J.C. Rule 3.01, ATT. ETHICS SUB-RULES 1.3 1.4(a)(b)  
WITH HIS OFFICE REFUSING COLLECT CALLS FROM CLIENTS YOUR  
PETITIONER REQUESTS TO BE HEARD AND MAKE A  
RECORD AT 2/2/05 HEARING, AND FOR RECONSIDERATION  
OF BAIL FOR REASONS SET OUT IN ATTACHED 5 PAGE  
COMPLAINT AGAINST JUDGE O'TOOLE WITH ITS EXHIBITS.

JANUARY 30, 2004 COPY  
SERVED ON ASST. ATT. GEN. SUSAN REARDON  
CC: ATT. JOHN AMABILE

Michael Duont  
MICHAEL DUONT, PRO HAC VICE  
Box 100, S. WALPOLEY, MA 02027

## JUDICIAL COUNCIL OF THE FIRST CIRCUIT

## COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

Through: GARY H. WENTE, FIRST CIRCUIT Executive

Mail this form to the Clerk, United States Court of Appeals for the First Circuit, United States Courthouse, Suite 2500, 1 Courthouse Way, Boston, Massachusetts 02210. Mark the envelope JUDICIAL MISCONDUCT COMPLAINT or JUDICIAL DISABILITY COMPLAINT. Do not put the name of the judge or magistrate on the envelope.

Copies To: Chief Judge William Young & Hon. Judge AUSA. Atty. General Susan Reedon  
See Rule 2(e) for the number of copies required. AND ALL OTHER D. MASS JUDGES AND O'TOOLE'S FRIENDS LATER upon my release!

1. Complainant's name: Michael Kevin DuPont  
Address: P.O. Box 100  
S. W. Alpole, MA. 02011  
Daytime telephone: ( )

2. Judge or magistrate complained about:

Name: George A. O'Toole, JR.

Court: DISTRICT OF MASSACHUSETTS AT BOSTON

Who should be disqualified from my case immediately

3. Does this complaint concern the behavior of the judge or magistrate in a particular lawsuit or lawsuits?

[ ☒ ] Yes [ ] No

If yes, give the following information about each lawsuit (use the reverse side if there is more than one):

Court: DUPONT V. NOLAN, 04-11431-GAO

Docket number: 04-11431-GAO

(AND ALL OTHER CASES ON HIS DOCKET HE IS TOO LAZY TO MAKE TIMELY RULINGS ON)

Are (were) you a party or lawyer in the lawsuit?

[ ☒ ] w/ counsel

[ ] Party

[ ] Lawyer

[ ] Neither

[ ☒ ] MAYBE

If a party, give the name, address and telephone number of your lawyer:

BUT CJA ASSIGNED ATT. JOHN AMABILE DOES NOT KNOW THE LAW  
SO-CALLED ATTORNEY JOHN AMABILE TOLD ME HE DOES NOT LIKE JUDGE O'TOOLE AND CRITICIZED O'TOOLE STRONGLY ON OUR FIRST VISIT

Docket numbers of any appeals to the First Circuit: \_\_\_\_\_

4. Have you filed any lawsuits against the judge or magistrate?

☐ Yes ☒ No Yet but  
 Bivens complaint for failure to train O'Toole may follow  
 If yes, give the following information about each lawsuit (use the reverse side if there is more than one):

Court: \_\_\_\_\_

Docket number: \_\_\_\_\_

Present status of suit: \_\_\_\_\_

Name, address and telephone number of your lawyer: \_\_\_\_\_

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of the appeal:

28 USC § 351 CO, MASS. RTC Rule 309 violations  
 Pattern of extremely rulings in all O'Toole cases =  
 For Engaging in conduct prejudicial to the

5. On separate sheets of paper, not larger than the paper this form is printed on, describe the conduct or the evidence of disability that is the subject of this complaint. See Rule 2(b) and 2(d). Do not use more than 5 pages (5 sides).

Expeditions Administration of Justice and  
 Not knowing bail law and habeas corpus law  
 6. You should either  
 Sufficiently to make truly decisions

- (1) check the first box below and sign this form in the presence of a notary public; or  
 (2) check the second box and sign the form. You do not need a notary public if you check the second box.

☐ I swear (affirm) that –

☒ I declare under penalty of perjury that –

- (1) I have read Rules 1 and 2 of the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability; and  
 (2) The statements made in this complaint are true and correct to the best of my knowledge.

Signature: \_\_\_\_\_

Date executed: \_\_\_\_\_

Sworn and subscribed to before me

Date: \_\_\_\_\_

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Attorney John Amabile  
 380 PLEASANT STREET  
 BROCKTON, MA, 02301  
 (508) 559-6966

please have my CJA sign this  
 Assigned lawyer speaks  
 And tell you dislikes  
 And why judge O'Toole

BECAUSE I DO NOT HAVE FEDERAL ETHICS RULES FOR JUDGES IN MY CELL, I AM CITING ANALOGOUS RULES OF MASSACHUSETTS SUPREME JUDICIAL COURT, AS FOLLOWS:

COMPLAINT #1: EX PARTE COMMUNICATIONS AND PURPOSEFUL DENIAL OF COMPETANT COUNSEL TO COVER-UP MISCONDUCT WHILE DENYING PETITIONER FAIR OPPORTUNITY TO BE HEARD.

PLEASE FIND ATTACHED HERETO A COPY OF JUDGE O'TOOLE'S PERSONALLY WRITING A LAWYER EX PARTE WITHOUT SERVING A COPY ON OPPOSING ATTORNEY GENERAL'S OFFICE COUNSEL, AND I AVEA THAT BEFORE 1/27/05 HEARING ATTORNEY AMABILE TOLD ME WHAT JUDGE O'TOOLE WAS GOING TO SAY ABOUT MY SUBSEQUENT FILINGS SO THERE MAY HAVE BEEN A SECOND EX PARTE COMMUNICATION.

SJC Rule 3009 JUDICIAL CANNON 3 (A) (4) PROHIBITS EX PARTE COMMUNICATIONS WITH ONLY ONE COUNSEL FOR ONE PARTY WITHOUT INCLUDING OR NOTIFYING COUNSEL FOR OTHER PARTY, HALLER V ROBBINS, 409 F2d 857, 258-859 (1st Cir 1989); JOHN V LOVE, 76 F3d 508, 513-515 (3d Cir 1996), BECAUSE IT "UNDERMINES CONFIDENCE IN THE IMPARTIALITY OF THE COURT", UNITED STATES V MINSKY, 963 F2d 870, 874 (6th Cir 1992) AND EVEN BRIEF COMMUNICATIONS WITH ONE LAWYER SUPPORTS RECUSAL, UNITED STATES V RHYNES, 206 F3d 349, 356-359 (4th Cir 1999), WHICH UNTRAINED JUDGE O'TOOLE SHOULD HAVE KNOWN, id.



Following Judge O'Toole's 1/10/05 EX PARTE Letter, the 1/27/05 HEARING TRANSCRIPT Tends To show UNUSUAL FAVORITISM FOR UNPRECEDENTED quick 2/17/05 HEARING next week Allowing Atty. AMABILE To have me present on 1/27/05 And 2/17/05 for minor Technical STATUS conference and motion To dismiss ARGUMENTS THAT NO HABEAS PETITIONER HAS ever been brought To court for To my knowledge by ANY Judge ever before, so I FEAR bias in FAVOR of Atty AMABILE because Judge O'Toole must know AMABILE cannot possibly know FACTS in my 10,000 page CASE RECORD AND does not know updated FEDERAL LAW, OR perhaps ANY controlling decisional LAW. The 1/27/05 STRIKING of my pleadings included Judge O'Toole STRIKING my complaint against him To conceal his misconduct/delay FROM FIRST CIRCUIT IN LATER APPEAL.

SJC Rule 36:09 JUDICIAL CANON 3CA(4) ALSO STATES "A Judge should ACCORD To every person who is Legally interested in a proceeding, or his lawyer, Full right To be heard according To LAWs", but Judge O'Toole denied me opportunity To be heard for past six months AND gave me AN incompetent CJA. LAWYER who NEVER contacted me until Judge O'Toole wrote AMABILE, AND did not even know To file A Timely APPEARANCE in my case for several months, ON VISIT, in Addition To CATACRIZE Judge O'Toole, Attorney AMABILE gossiped About Lesbian NON Judge Regina Quinlan in my case but said Quinlan's girlfriend AAG BARBARA A.H. SMITH WAS dating prosecutor Phyllis BROKER, not QUINLAN, when AMABILE worked with her in the Attorney General's office.

Attorney Amabile has not accepted any of my collect calls to his offices in past two months, and has not written me to answer any of my letters and broke his 1/12/05 promise to me that he would file a bail motion and other stuff within a few days, but he never filed anything and 1/22/05 transcript verifies his laziness when he read only on my pro se pleadings, id. when I asked Amabile about 1/12/05 US v Booker case, just like when I named cases before, he had a blank look on his face, and he asked me for copies of bail cases RIVERA v CONCEPCION, — Fed — Cist Cir 1922 and OBER v GUARINO, — Fed — Cist Cir 2002 because Amabile didn't know any habeas corpus bail cases during 1/22/05 hearing. I helped several other prisoners prepare new trial motions attacking Attorney Amabile for not knowing STAR Decisional Law at their murder trials, but I was shocked that O'Toole would allow Amabile to practice in his court room knowing Amabile does not read or know basic Federal Decisional Law. Judge O'Toole covers up for incompetent CJA counsel by not allowing client victims to file motions or make a record speaking in his court room, so I would check out in your investigation all O'Toole cases with the most incompetent lawyers on C.J.A. list such as Atty Roger Cox who sells-out all of his clients, or lawyers like Amabile who do not read updated Fed Decisional Law like Bernie Grossberg and 50% of all CJA list counsel, or Roger Witkin who tells his clients he's not going to file motions because the motions will be denied by Federal Judges anyway. The CJA list should be opened to allow new young competent and diligent lawyers to get on CJA list, and 50% of old over-the-hill incompetent lawyers who merely overbill the government while never

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Adequately preparing for trials should undergo competency evaluations and be removed from Federal CJA Assignment List.

COMPLAINT #2: PATTERN IN DELAY IN RULINGS:

SJC Rule 3:09 Judicial Canon 3 (A) (5) states, "A Judge should dispose PROMPTLY of the business of the court" so I request you to investigate all other O'Toole case docket entries for pattern of his untimely decisions, as verified by my attached 04-11431-GAO docket entries showing a dozen motions he was not ruled on, with attached 3/4/05 sentence recalculation for 2/26/05 release from prison that may moot Habeas Grounds. CONTRAST O'Toole Ruling on mootness reviewed in JACKSON V COALTER, 337 F.3d 74, 79 (1st Cir 2003) with Supreme Court cases cited therein explaining that the "case or controversy requirement subsists through all stages of Federal judicial proceedings," and the practical effect of O'Toole's delay severely prejudiced me on APPENDIX-BLAKEY-BOOKER release and related sentencing grounds he had no excuse for not deciding merits of.

COMPLAINT #3: COVER-UP FOR GOVERNMENT MISCONDUCT AND O'TOOLE NOT BEING TRAINED IN FEDERAL HABEAS CORPUS OR BAIL LAW:

SJC Rule 3:09, Judicial Canon 3 (B) (3) (b) and D. MASS. Local Rule 83.6 (5) (A) Judge O'Toole has ability to refer the Assistant Attorney General in my case to the Board of Bar Overseers for reasons stated in pleadings listed in my docket entries, incorporated herein by reference, but your future investigation may find he covered up for government lawyers as O'Toole always does!



SJC Rule 3809 JUDICIAL CANON 3 (A)(i)

STATES "A JUDGE should be FAITHFUL TO THE LAW AND MAINTAIN PROFESSIONAL COMPETENCE IN IT" and so I should not have to teach O'Toole that D. MASS LOCAL Rule 83.5, 2(a) Required INCOMPETENT ATTORNEY AMABILE TO FILE AN APPEARANCE; hence O'Toole did NOT HAVE harmful power to STRIKE my PRO SE MOTIONS properly filed before counsel's APPEARANCE.

I should not have to teach Judge O'Toole that he HAS power to GRANT bail even before exhaustion of STATE remedies where delay is a FACTOR, REVERA V CONCEPTION, 469 F2d 12, 18 (1st Cir, 1972) AND often "the PETITIONER HAS REMAINED FREE ON bail pending the outcome of the habeas proceedings", OUVER V GUARDINO,

295 F3d 19, 25 (1st Cir 2002) while bail IS PARTICULARLY APPROPRIATE FOR APPENDED GROUND following BLAKELY-BOOKER decisions, UNITED STATES V CASTRO, 382 F3d 927, 929 (1st Cir 2004) AND PETITIONER DuPont also has A denial of PLEA STAGE COUNSEL WITHOUT A WAIVER OF COUNSEL GROUND, IOWA V TOVAR, 124 S.Ct 1379 (2004) THAT SHALL REQUIRE REPLEA SENTENCING, AND bail release IS PARTICULARLY APPROPRIATE where A showing IS MADE THAT A FAVORABLE decision MAY RESULT IN RESENTENCING TO A TERM LESS THAN TIME ALREADY SERVED, UNITED STATES V ANTICO 123 F3d 285 (1st Cir 2000)

Judge O'Toole should NOT be Allowed to SIT AND hear HABEAS CORPUS cases UNTIL he certifies UNDER OATH THAT he READ COVER-TO-COVER, Lieberman FEDERAL HABEAS CORPUS PRACTICE + PROCEDURE (4th ed 1999 w/2004 supp), but I'll gladly TRAIN O'Toole for you when I LAWFULLY HAUNT his COURT ROOM upon my release giving PRO BONO ASSISTANCE TO LITIGANTS IN ALL O'Toole's OTHER cases since the UNITED STATES FAILED TO TRAIN him IN LAW + common courtesy.

-5085- Mike O'Went



UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

MICHAEL KEVIN DuPONT, \*  
Petitioner \*  
V. \* No.04-11431-GAO  
DAVID NOLAN, \* (Submitted through CJA Counsel  
Respondent \* to file/serve before 2/7/05)  
\*\*\*\*\*

PETITIONER'S RENEWED MOTION FOR BAIL FROM PRESENT SENTENCE  
TO 30 DAY CONSECUTIVE SENTENCE ON 2/7/05 PREVENTING MOOTNESS

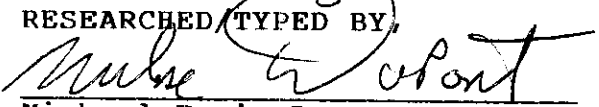
Now comes the Petitioner, forwarding this through CJA n.1/  
counsel (despite failure of counsel to file Local Rule 83.5.2(a) appearance in past two months) and, pursuant to 28 USC §2243("shall summarily hear and determine the facts and dispose of the matter as law and justice require") and pre-exhaustion bail precedent, RIVERA V. CONCEPCION, 355 F.Supp 662,665-666(D.PR 1972(Sentence substantially completed before substantial questions of law are decided, requiring bail); 469 F2d 17(1st Cir 1972) as well as pending habeas petition inherent power to grant bail, OUBER V. GUARINO, 293 F3d 19,25(1st Cir 2002)("The petitioner has remained free on bail pending the outcome of the habeas proceeding") where resentencing may occur if the post-conviction attack prevails, UNITED STATES V. ANTICO, 123 F.Supp2d 286) remanded 275 F3d 245,272(3rd Cir 2001) especially when a Blakely-Booker issue is presented, UNITED STATES V. CASTRO, 382 F3d 927,929(9th Cir 2004(Remanding for bail remedy), moves this Court to reconsider personal recognizance bail release on 2/7/05 to prevent risk of mootness, JACKSON V. COALTER, 337 F3d 74,79,(1st Cir 2003)(Modifying Judge O'Toole's mootness ruling). By starting the Petitioner's 30 day Norfolk County Jail consecutive sentence and preserving a few weeks on present 20 year sentence pending result of First Circuit appeal, risk of losing federal jurisdiction can be avoided, and petitioners attached legal references and PSI show he is not a flight risk and shall find employment upon release.

February \_\_, 2005  
copy served on Ass. Atty.  
General Susan Reardon

RESPECTFULLY SUBMITTED THROUGH,

RESEARCHED/TYPED BY,

John Amabile, Esq.  
380 Pleasant Street  
Brockton, MA.02301

  
Michael Kevin DuPont pro hac vice  
PO Box 100  
S. Walpole, MA.02071

n.1/ Because no appearance was filed, stricken 1/27/05 pleadings should be reinstated to this Court's docket at 2/7/05 hearing

